

Ordinance No. 987-2024

By Council Members Polensek and Griffin
(by departmental request)

AN EMERGENCY ORDINANCE

To amend various Sections of Chapter 396 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 2020-A-96, passed December 14, 1998, relating to notification, environmental abatement and securing of closed or vacated facilities.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Sections 396.01, 396.03, 396.05, and 396.07 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 2020-A-96, passed December 14, 1998, are amended to read as follows:

Section 396.01 Definitions

As used in this chapter:

(a) “Close” or “closing” means the permanent discontinuation, termination, or cessation of business regulated operations at a facility. For purposes of this chapter, “permanent” means a period of time longer than ninety (90) days and does not include transfer of the business regulated operation to another entity which will resume the operations within the ninety (90) day timeframe.

(b) “Establishment” means an economic unit generally at a single physical location where business is conducted or where services or industrial operations are performed.

~~(b)(c)~~ “Facility” means an industrial structure of any size or a commercial structure where such commercial structure is larger than one hundred and fifty thousand (150,000) square feet; all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person. However, in the case of a site or contiguous or adjacent sites that are owned by the same person and on which two or more establishments are located, each portion of the site or contiguous or adjacent sites and the buildings, equipment, structures, and other stationary items located thereon that is occupied by an establishment that is not owned or operated by the same parent corporation as, or does not have common corporate or business interests in or with, another establishment located thereon is a separate facility; and, in the case of a building or structure that is so located and that is occupied by two or more establishments, each portion of the building or structure and the equipment and other stationary items located therein that is occupied by an establishment that is not owned or operated by the same parent corporation as, or does not have common corporate or business interests in or with, another establishment that is located therein is a separate facility.

(d) “Generator” means any person, by site, whose act or process produces hazardous substances at a facility as defined in this Chapter or whose act first causes a hazardous substance to become subject to regulation under this Chapter.

(e) “Regulated operations” means the production, use, storage, or handling of regulated substances.

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~~(e)~~(f) “Regulated substances” means all hazardous ~~and flammable~~ substances regulated by this Title, as well as petroleum, tires, and any other hazardous ~~or element, compound, mixture, solution, material, gas, or substance having characteristics~~ identified as hazardous including flammable, ignitable, corrosive, reactive and toxic substances regulated pursuant to ~~federal, state, Federal, State,~~ Federal, State, or local environmental laws.

~~(d)~~(g) “Vacate” or “vacant” means abandoning a facility where regulated operations have been conducted, or a majority of the facility where regulated operations have been conducted as measured in square footage, such that no regular activities or regular occupancy by persons associated with the facility is occurring. It does not include:

(1) Storage of materials regulated by and in compliance with the remainder of this Title;

~~(2) Storage of materials regulated by and in compliance with state or federal environmental law;~~

~~(3)~~(2) Storage of materials being actively used in normal business processes. The burden is on the owner, operator, or party in control to show that the materials are in active use;

~~(4)~~(3) Storage of materials that are not regulated substances and that are stored by an entity that is in the commercial storage business as a part of that business.

Section 396.03 Notification, Facility Closure Plan, Clean-up, and Fee Requirements

(a) No later than ~~sixty (60)~~ fifteen (15) days before closing or vacating a facility the owner, operator, or party in control of the facility shall submit to the Fire Chief a written notice that the facility will be closed or vacated, accompanied by a check or money order payable to the “City of Cleveland” for the sum of two hundred fifty dollars (\$250.00). Copies of the notice shall also be submitted to the Director of Economic Development, the Commissioner of Environment, and the ~~Commissioner~~ Director of Building and Housing.

(b) The notice shall designate a contact person who works or resides in Cuyahoga County and who shall be available both before and after closing or vacating the facility, until the time that the property is transferred to another owner, operator, or party in control. The contact person shall provide access to the facility to City employees and agents to inspect the facility for the purpose of ascertaining compliance with this chapter. The contact person shall respond to requests for information regarding the facility exercising reasonable diligence; however, the designation of a contact person does not preclude a City employee or agent from requesting information from or making notifications directly to the owner, operator, ~~or party in control,~~ or generator.

(c) The notice shall include the address and telephone number of the principal office or residence of the owner, as well as the operator or party in control, and the address and telephone number of the contact person.

(d) The notice shall include the date on which the facility proposes to close or be vacated and shall include any plans for transfer of the property to another owner, operator, or party in control, if known.

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(e) A person or entity acquiring title to or control over any facility which is closed or vacant shall comply with the notice requirements of this section within ~~sixty (60)~~ fifteen (15) days after acquiring title or control and the facility closure plan requirements not later than thirty (30) days after acquiring title or control.

(f) Facility closure plan. Not less than 30 days prior to closing or vacating a facility, the owner, operator, party in control, or generator shall submit to the Fire Chief for review and approval, if appropriate, a facility closure plan. The plan shall meet the following requirements:

(1) Demonstrates that the hazardous substances that are stored, dispensed, handled or used in the facility will be removed, transported, treated, or disposed of in a manner that complies with the provisions of this Fire Code, including permit requirements for removal.

(2) Demonstrates that the methods for removal, transport, treatment and disposal will meet Federal and State law requirements, and will eliminate the need for further maintenance and any threat to public health or safety.

(3) Contains a description that sets forth the procedure for cleaning equipment, removing contaminated soil, sampling and analysis methods for soils, and criteria for determining the extent of decontamination required to meet the requirements of Federal and State law and this Fire Code.

(4) Contains a compliance schedule and a timetable to achieve full compliance with the provisions of this Fire Code.

Whenever a change in an operation or design occurs that will affect the closure or time frame for closure, then the owner, operator, person in control, or generator must first submit a written request for a change in the plan that must include a copy of an amended closure plan. The request for modification and amended closure plan shall be submitted thirty (30) days prior to any date in the original plan that will be affected by the modification. An amended plan must be approved by the Fire Chief.

(g) Every owner, operator, or party in control of a closed or vacated facility shall treat, remove, or dispose of all hazardous substances at the regulated facility in accordance with Federal and State law and this Fire Code within sixty (60) days of closing or vacating the facility unless another timetable is provided in a facility closure plan approved by the Fire Chief.

(h) In addition to any other remedy under this Chapter, the Fire Chief may issue abatement orders to the owner, operator, person in charge, or generator to remedy any hazardous or dangerous condition, or orders to conduct the necessary tests to determine the sources of hazardous substances, within the time limit stated in such order, when necessary to prevent any threat to the public health or safety from the hazardous substances at the facility, including for failure to submit a facility closure plan in accordance with division (f) above.

Section 396.05 Building, Structure or Outdoor Location to be Secured Against Unauthorized Entry; Warning Signs

(a) Before closing or vacating a facility, the owner, operator, or party in control of the facility shall secure against unauthorized entry each building or structure at the facility and each outdoor location by one (1) or more of the following methods:

(1) Boarding or locking windows, doors and other potential means of entry;

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(2) Providing security personnel to patrol the facility on a twenty-four (24) hours-a-day, seven (7) days-a-week basis;

(3) Providing secure fencing;

(4) Providing lighting and a surveillance system;

(5) Using any other method or methods that are approved by the Fire Chief or the Fire Chief's designee.

(b) The owner, operator, or party in control shall post about each building, structure, or outdoor location in publicly-visible locations warning signs that prohibit trespassing and, if applicable, state that the facility may contain regulated substances that may endanger public health or safety if released into the environment or may constitute a fire hazard. The signs shall be constructed to withstand weathering, be firmly affixed to secure against removal in an approved manner, and consist of all of the following: 1. White reflective background with red letters; 2. Durable material; 3. Numerals shall be Roman or Latin numerals, as required, or alphabet letters; 4. The width and height of the letter shall be 6 inches by 6 inches (152 mm by 152 mm); 5. The height or width of each Maltese cross wing area shall be 11 / 8 inches (29 mm) and have a stroke width of 1 / 2 inch (13 mm); 6. The center of the Maltese cross, a circle or oval, shall be 3 inches (76 mm) in diameter and have a stroke width of 1 / 2 inch (6 mm); and 7. All Roman numerals and alphabetic designations, shall be 11 / 4 inch (32 mm) height and have a stroke width of 1 / 4 inch (6 mm).

(c) The owner, operator, or party in control shall continue to ensure that the facility is secured against unauthorized entry by maintaining the security measures and the warning signs until the facility is transferred to another owner, operator, or party in control. All fire protection systems shall remain in service and be maintained as required by the Ohio Fire Prevention Code.

(d) Promptly after discovering, or after receiving notice from the Fire Division, whichever is earlier, that any of the entry barriers or warning signs installed pursuant to this section have been damaged, lost, or removed, the owner, operator, or party in control shall repair or replace them.

(e) A person or entity acquiring title to or control over a facility which is closed or vacant shall comply with the requirements of this section immediately upon acquiring title or control.

Section 396.07 Authority of City Where Responsible Party Fails to Act

(a) If the owner, operator or party in control fails to undertake the security and posting measures required by this chapter, the City may undertake those actions without further notice. Any costs incurred by the City in doing so shall be recoverable as costs under Section 3103.09 of the Codified Ordinances.

(b) If the conditions at a facility, including a fire, spill, leak or emission of a hazardous material at the facility, constitute an imminent and substantial threat to public health or safety, or are causing or contributing to, or are threatening to cause or contribute to, air or water pollution or soil contamination, then the Fire Chief, the Commissioner of Environment, or the ~~Commissioner~~ Director of Building and Housing may take such remedial actions as are necessary to protect the public health, safety, or the environment. These actions include without limitation extinguishing fires, demolishing buildings or structures, boarding or otherwise securing property, placarding the property with warning signs, and removing equipment, materials, or

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substances, and contracting with environmental professionals to take remedial actions on behalf of the City.

(c) Costs to Be Paid by Property Owner.

(1) Any and all expenses or costs, including, but not limited to, attorneys fees', costs of inspection, administrative and support staff, property maintenance costs, court costs, title search fees, process server fees, skip tracing expenses, and costs of collection or prosecution, including discovery and deposition expenses, incurred under this section relating to remediation necessary to protect the public health, safety, or the environment or the demolition, repair, alteration, securing or boarding of a building or structure or for abating any other nuisance shall be paid by the owner of such building or structure, except when such expenses or costs are incurred with respect to a government or school building owned by a governmental entity or political subdivision and is funded by federal money.

(2) Any and all owners of a building or structure who appear in the chain of title from the time the facility becomes subject to regulation under this Fire Code for the use, handling, storage, or removal of hazardous substances to closure of the regulated facility shall be jointly and severally responsible for all costs and expenses incurred relating to the demolition and all costs and expenses of prosecution or collection related thereto.

(3) If within thirty (30) days from the date the Director of Public Safety sends a statement of charges and costs incurred to the last known address of the property owner or the tax mailing address listed at the Cuyahoga County Recorder's office and its successor in interest as the custodian of the real property tax records for Cuyahoga County, the owner fails to pay for the costs of remediation, removal, repair, alteration, securing or boarding or of inspections of violations that have not been remedied, the Director may certify the amount to the Commissioner of Assessments and Licenses, including collection agency fees. The Commissioner of Assessments and Licenses may make written return to the County Auditor of the action under this section with a statement of the charges for services, the amount paid for the performing of labor and a proper description of the premises. Certification to the County Auditor is for the purpose of making expenses and costs a lien upon the lands, to be collected as other taxes and returned to the City with the General Fund, with special accounting under RC 715.261.

(4) Notwithstanding the method of collection set forth in this division, the Director of Law, in the Director's sole discretion, may take any action necessary to collect the costs of remediation, demolition, boarding, or other nuisance abatement from the owner or other responsible party, including but not limited to filing of legal proceedings, referring the amount due to outside counsel by the Law Director for collection action, including filing civil complaints, and initiating post judgment execution actions.

(d) Civil Actions. Whenever the Fire Chief finds that any person has violated or is violating any provision of this chapter, or has failed to remove or abate any other condition that is a threat to public health or safety under this chapter, the Fire Chief, in addition to any other remedies or penalties available under this chapter, may order in writing that the violation cease immediately, and such person violating or who has violated a provision of this chapter shall pay a civil penalty of no more than one thousand dollars (\$1,000.00) per day of violation.

~~(e) The owner, operator, or party in control of a facility where a remedial action is undertaken by the City if liable to the City for the total cost of the remedial~~

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action, including the costs of inspections related to the remedial action, in addition to any other liabilities imposed by law.

~~(d) The owner, operator, or party in control of a facility who has been found guilty of a violation of this chapter may be required to repay to the City any direct cash grant subsidy, where there was no initial obligation of repayment to the City, and the grant was received from the City through its Department of Economic Development after the effective date of this chapter. The repayment shall be made by order of the Court after notice and a hearing.~~

Section 2. That Sections 396.01, 396.03, 396.05, and 396.07 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 2020-A-96, passed December 14, 1998, are repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

ST:uo
9-16-2024
FOR: Director Drummond

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**REPORT
after second Reading**

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READ FIRST TIME on SEPTEMBER 16, 2024

REPORTS

**and referred to DIRECTORS of Public Safety, Finance, Law;
COMMITTEES on Safety, Finance Diversity Equity and Inclusion**

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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Published in the City Record _____

**PASSAGE RECOMMENDED BY
COMMITTEE ON
SAFETY**

FILED WITH COMMITTEE

**PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE, DIVERSITY, EQUITY
and INCLUSION**

FILED WITH COMMITTEE

